

11b Keble Heights Retaining Wall Problems

[Photos of the fence can be found here.](#) Click on any of the photos to get a full sized photo in a new tab.

This document is intended to provide an overview of the problem regarding the boundary retaining wall between 11B Keble heights and 14 Trinity rise, College Grove Bunbury.

This is a live document, and will update it as required.

Summary

My uphill neighbours added new retaining walls to their front lawn, and 700mm of sand was stacked against the fence with no other support.

The boundary fence broke and at the same point the retaining wall beneath it cracked and bulged.

Neither the boundary fence nor the retaining wall were designed to restrain this 700mm of extra sand.

The Bobcat used to help build this new retaining wall is estimated to weigh approx 2,700 kg, and probably ventured too close to the fence.

Council regulations require all retaining walls should not have additional loading placed on them above what they were designed for, regardless of who's land the retaining wall is built on.

A structural engineer's report stated that the extra over burden could cause the retaining wall to collapse, however the Marshes have refused to remove this overburden because of fears that it would undermine their new retaining walls, which have their foundations approx 700mm higher than the top of the original boundary retaining wall, and 550mm higher than an abutting retaining wall on our common neighbour at 14 Keble Heights.

The Marshes feel they can do whatever they like because the 20 + year old retaining wall does not have the proper building permit.

I feel that this retaining wall is well documented as part of building permit 11489, granted on 7/7/1994, and that the entire problem has been caused by them because they stacked so much sand against the fence, and that they should pay to fix the damage they caused.

Structerre were originally asked to come up with a solution to this problem, but not only failed to do so also failed to notify anybody that it was too difficult for them.

I then commissioned WML to come up with a solution to the problem. They offered two solutions, the first being to reinforce the original retaining wall and to make it tall enough so that the ground level above the retaining wall could be level. The second option was to simply reinforce the boundary retaining wall at its original height. I offered James Marsh the option of contributing towards a higher retaining wall, but that offer was flatly rejected.

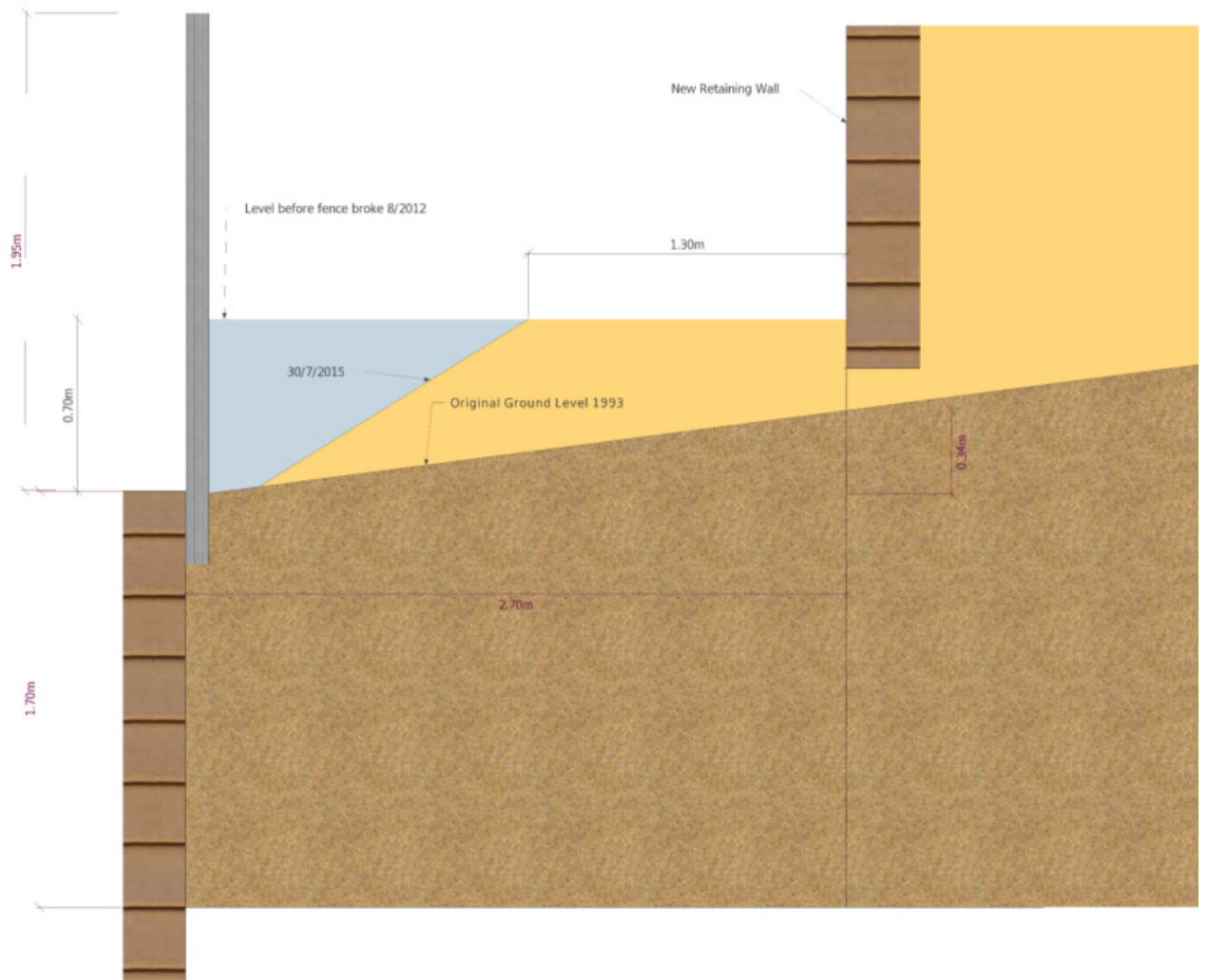
I then obtained a council building permit and started to build the reinforcing myself. I purchased most of the reinforcing bar, and was compacting the sand at the foot of the retaining wall in preparation to dig the foundations when I was abused and hosed down by Sharyl. I decided at that point that me putting in effort to help them to save money was not such a good idea, and sought legal advice to see what my options were.

I ended up paying over \$1,500 for contradictory advice, and discovered that I could take the matter to court myself without paying for extremely expensive lawyers.

There was a pre-trial hearing on 18th of June and the 30th of July 2015 to try to resolve this problem, but so far the only money offered has been for quarter of the boundary fence, and the overburden Structerre warned could cause the original retaining wall to collapse is still in place.

The Marshes logic being that they are only paying for half of the cost to replace the section of fence that is on their property, the section that is between our common neighbour and myself is my fault because I did not act quick enough to get the first section replaced.

I did not get that first section replaced earlier as I was concerned, and I still am, that it would make repairing or reinforcing the original boundary retaining wall a lot harder and a lot more expensive, and there is a very real concern that the Marshes would promptly add more overburden.



Detailed Time Line

1991

Driveway on 14 Trinity Drive appears to have been put in before Sewer pipe.
[Sewer pipe in the easement](#) is thought to be installed this year.

20/08/1991

Original title issued for 14 Trinity rise. Date assumed from 17/12/2015 affidavit.

15/4/1994

[Water Authority approval for first retaining wall.](#) at 11b Keble Heights.

23/4/1994

[Building Approval 11335](#) given for retaining wall at 11 Keble heights, College Grove. (West) [Footing Detail](#)

18/6/1994

Building Approval 11398 given for house. [Storm water drainage](#) and [Elevation drawing.](#) and [Top view](#) given for 11b Keble heights, College Grove.

7/7/1994

[Building Approval 11489](#) given for retaining wall at 11 Keble heights, College Grove. (East) [Builders permit page 1,](#)
[Builders permit page 2](#) [Writing on envelop.](#)
[List of Building permits](#)

The house appears to have been built by [Ascoli Holdings Pty Ltd](#) for Frank Cavoli who lives at 1 Possum Way, College Grove WA 6230. (08) 9795 7352. This may be the wrong person.

24/01/1996

11 Keble Heights divided as strata title according to 17/12/2015 affidavit.

14/04/2003

Marshes purchase 14 Trinity Rise. [Certificate of Title for 14 Trinity Rise](#). Date assumed from letter of defence on 7/12/2015.

25/02/2011

Settlement date. Andrew Purchased 11b Keble Heights for \$465,000. Asking price was \$480,000.

11/03/2011

11b Keble Heights Title registered in my name according to 17/12/2015 affidavit.

8/5/2012

Building permit issued for new retaining walls at 14 Trinity Rise to be built parallel to their lower boundary fence. [Design, Permit, requirements, compliance](#).

4/9/2012

While I was in Melbourne cleaning up after my dad's death I received a phone call telling me that the boundary wall had collapsed during a storm. I chased up retaining wall people, they rang and told me that they could not extend the retaining wall. It did not make a lot of sense until I found that the retaining wall had not collapsed, just the fence.

10/10/2012

I flew back to Bunbury for a week, mostly to deal with the collapsed boundary wall, which I found out was only the boundary fence that had collapsed. However the boundary retaining wall did have a bulge and a crack in the top row of bricks. I asked for Struterre engineering to examine the wall and to let me know if they considered the wall to be safe.

19/11/2012

Received [letter from James with an attached quote from T&V fencing](#) for \$1,980.69, of which I was expected to pay 50% or \$990.34. [Letter](#) was dated 2/10/2012, Quote was dated 23/10/2012.

20/11/2012

I sent an email to Nick Arkell of T & V fencing explaining that I wanted to make sure the wall was OK before replacing the fence.

After chasing up Struterre to see what was happening with their report, I found out that they sent an invoice to 11B Keble heights.

I explained to them again that I was in Melbourne and they then emailed me the invoice as I originally requested. I then paid [their invoice of \\$555](#).

Received [Struterre report on retaining wall](#).

Email [exchange where Greg Hamilton from Struterre states that the extra loading on the retaining wall needs to be removed](#) in case it causes the retaining wall to collapse. This was sent to the Marshes on 22/01/2016 as part of my general affidavit to define documents wanted from the defence.

Based on rough calculations I worked out the the sapling mentioned in the report would have contributed at most 0.45% (less than half of one percent), of the overburden the extra sand was causing, and this was not refuted by Struterre.

Note that the crack in the boundary retaining wall is 2.4 meters from the eye bolt that held the sapling.

The diagram attached to this report shows what they were looking for when probing for backing blocks. A copy of the building permit for the retaining wall had not been requested at that point. The building permit clearly shows a different method was used, being mortared basalt or rock fill. This may still be there now or it may have been washed away due to any surface storm or rainwater accumulating against the fence, or it is possible that it was not constructed properly in the first place.

There is no mention of what effect a 2,700 kg Bobcat would have if driven too close to the fence.

I was not aware at this time that Struterre also designed the Marshes new retaining walls.

26/11/2012

Struterre sent a quote for \$3,135 for [instructions on how to fix the wall](#).

2012 / 2013

I was in Melbourne from 7/2012 to 5/2013 dealing with family issues.

From 6/2013 to 12/2013 I was based in Bunbury, mostly working 4/1 swings.

23/05/2013

Signed sales agreement with Henry from the Professionals Real Estate.

13/12/13

Settlement date for land in Port Lincoln.

My initial loan was for the maximum I could borrow, which allowed me an approx \$60,000 safety net in case of delays in selling my house.

1/2014 to 3/2014

I was back in Melbourne dealing with family issues.

2013

Murray from Bunbury city council inspected fence.

16/12/2013 to 9/04/2014

Chased up Murray from Bunbury city council to see what was happening re removing sand. Received this [email exchange.....](#)

25/3/2014 to 21/08/2014

[Email exchange](#) containing [this initial letter from the Bunbury city council asking why nothing had been done.](#)

4/2014

Purchased a certified for road, rail and sea shipping container to transport my belongings from Bunbury to my new home in Port Lincoln, and put it in storage at Picton.

15/04/2014

[Structerre Report concerning soil at foot of new retaining wall.](#)

21/04/2014

[Email](#) containing a copy of [Letter to Water Corp](#) regarding clearance to sewerage pipes in the sewerage easement between the boundary retaining wall and the new retaining wall.

22/04/2014

[Email exchange](#) where Sharyl claims that no sand was stacked against the fence.

[Structerre Invoice for 15/04/2014 report](#)

8/05/2014

[Email exchange with Gary from the City of Bunbury](#) where he explains that Structerre had decided not to work on fixing the problem, without telling anybody. He also explains that the building permit for the retaining wall does not cover that section of the retaining wall.

Because the retaining wall may not have had a permit, there is no requirement for the Marshes to keep that section of land clear.

The Western retaining wall has its own separate permit, and the permit for this Eastern retaining wall clearly shows the disputed retaining wall.

I do not have a clue about what he thinks Eastern retaining wall building permit is for.

There are also notes on the original building permits stating that the retaining walls needed to be finished before foundations for the house could start. Given the proximity of the house to the retaining walls it is not possible that the failing Eastern retaining wall was built after the house was built.

[Phone call at an unknown later date](#) where Gary tells me that he could not find any evidence that the ground level had risen uphill of the boundary fence. This is despite seeing the 700mm of extra sand, and the post and rail retaining wall built on top of my neighbours retaining wall. I have never had any feedback regarding the other issue he raised.

9/05/2014

I get suspicious that Structerre are at least partly to blame for the original problem, [and request a copy of the building permit for Marshes new retaining walls.](#)

[Email exchange with Gary from Bunbury City Council re privacy and their building permits.](#)

14/5/2014 to 29/5/2014

Emailed [Notice of proposed complaint to](#) the WA Building commission, CC to Gary and Sharyl.

Modified complaint to suit Sharyl's feedback.

After giving the required minimum of 2 weeks notice to Sharyl, I submitted the [complaint to the Building Commission](#) resolution process, who promptly emailed back to say that they do not deal with retaining walls.

The Building Commission also sent a [Link to legal aid WA regarding dividing fences.](#) where they state that they do not provide support for retaining wall issues.

[Email exchange regarding the Building Commission.](#)

7/07/2014

[Email exchange](#) where Marshes only wanted to pay half of half (1/4), of the section of fencing between our two boundaries, and not the entire section that they caused to be damaged. Their logic being that the extra damage was done because I delayed in getting the fence replaced.

17/7/2014

[Quote to repair fence for \\$2235.20.](#)

Email to WML asking for help with the boundary retaining wall.

31/7/2014

Received [Survey](#) explaining that boundary retaining wall is on my property.

I commissioned WML to [draw up two retaining wall options](#), one at the original height of the wall, and the second one higher so that the Marshes did not need to pull down their new retaining wall(s).

I asked James Marsh if they were willing to contribute to a higher boundary retaining wall, and he made it very clear he did not want to contribute anything. I asked what they were going to do with the extra sand above the height of the retaining wall. He told me they were going to wait until the fence had been replaced, then deal with the problem.

The bulk of this is in the email exchange on 21/08/2014.

I have the very strong feeling that they intend to place a new retaining wall very close to the boundary fence and place more sand between this retaining wall and their existing lower retaining wall, overburdening the newly reinforced boundary retaining wall. This would be the reason they asked the water corp how much clearance they needed for the sewerage pipes, and also why they still have extra retaining wall blocks.

21/08/2014

Email exchange [where the Marshes respond that they have no intention of removing any extra sand as that would compromise the foundations of their new retaining wall.](#)

25/08/2014

[Blank Building plan request form and freedom of information form.](#)

2014

The Marshes had made it very clear that they do not want to contribute to a higher boundary retaining wall, so a [smaller boundary retaining wall option](#) was submitted to council for building approval.

1/12/2014

A building permit to reinforce the retaining wall between 14 Trinity Rise and 11b Keble Heights was granted by the city of Bunbury.

01/09/2014

[Obtained a full set of building permits for 11b Keble heights.](#)

01/12/2014

Building permit approval from city of Bunbury to reinforce damaged boundary retaining wall.

11/12/2014

House sale listing with Professionals expires. House had been on Market since 23/6/2013, or about 18 months.

The chances of selling the house with the retaining wall problem unresolved have proven to be very low, with an asking price that recommended by the estate agents of \$430,000, or \$35,000 less than I paid for it.

18/12/2014

[WML invoice up to this date.](#) I have other emails relating to WML but I do not think they are needed.

11/01/2015

Was abused and hosed down when attempting to build the new retaining wall myself.

15/3/15

Went to visit a lawyer to find out where I stood and what my options were.

Harriette Benz from BENZ LEGAL charge \$420 + GST = \$462 per hour, recommended by WML engineering, but not recommended by me.

They told me that the boundary retaining wall is considered part of the boundary fence under the dividing fences act, and that the Marshes need to contribute regardless of if the original boundary retaining wall had a building permit or not.

Based on that advice I spent some time giving some details of the issue to the lawyer, and created this web page, and the photos web page so that all details would be available if and when they were needed.

I later received an email from that same lawyer "confirming" that the retaining wall is not covered by the dividing

fences act, directly contradicting what they originally told me.

I was required to put \$2,000 into a trust account before I started, and on 6th May I asked for the balance to be returned. On June 2nd I received \$445.80 back after I sent a reminder email.

\$1,554.2 for giving me advice that was wrong.

10/4/2015

[Original Quote from Bunbury Concreting for \\$19,800](#)

4/2015

The road, rail and sea certification on my shipping container in Picton was about to run out. I had already spent approx \$1,300 on storage, with an unknown time frame before my house would be sold. I sent the shipping container to Port Lincoln without things I was likely to need in the next couple of months.

When I do finally move I will fill my van and trailer and leave everything else behind, including my fridge, washing machine, desk and bed.

7/5/2015

Re-listed house for sale with "Forsalebyowner" real estate agents as I had been unemployed for 4 months, my \$60,000 safety net had been used up, and there was a very real possibility that the bank would foreclose on my loan.

1st week of 5/2015

I googled "Dividing fences act" and found the information that I paid the lawyer to tell me, and submitted my claim directly to the Bunbury Magistrates court.

[Landgate web page](#) giving [advice on dividing fences](#).

[Magistrates court list of forms](#).

Magistrates court documents

[Form 3 General Procedure Claim](#)

[Fact sheet 13, page 1](#)

[Fact sheet 13, page 2](#)

[Fact sheet 13, page 3](#)

[Form 17 Notice of intention to defend](#)

[Form 29 Notice of pre-trial Conference](#).

[Invoice for conference](#).

At this point in time, (6 June 2015), I am not using any lawyer. I have not burnt my bridges with Harriette Benz, but would prefer to find someone else if it turns out I do need a lawyer.

8/5/2015

Defendant signed an intention to defend according to paperwork received by email on 7th December.

18/06/2015

Pre-Trial hearing at the magistrates court in Bunbury.

Both Marshes, their lawyer and I attended, but most of the time I was sent out of the meeting room. I gave the Marshes a copy of the building permit plans and showed them the invoice for the concrete contractor.

The Marshes had been told that the cost of reinforcing this section of retaining wall would be between \$5,000 and \$10,000, and they were going to go and get a "firmer" price or quote. There was no reason given for not having done so already.

The Marshes also agreed to look into removing the overburden sand from the boundary retaining wall to comply with building regulations, and to reduce the chances of the weakened retaining wall either falling by itself or as the foundations are dug.

The invoice for the concrete contractor did not specify the length of retaining wall that was going to be reinforced, and asked me to ask the contractor to clarify this point. I chased this up and forwarded it to the Marshes once I had received it.

Ian, the Marshes Lawyer, who has previously been to the site, insisted that the sand next to the original retaining wall had been removed for at least a meter from the edge of the retaining wall.

18/06/2015

Reminded Marshes that it was costing me approx \$500 per week just in Mortgage payments because of delaying the sale of my house, and to please keep me informed of any progress they make, but no feedback was received until the day before the next pre-trial hearing.

26/6/2015

Alex from Bunbury Contractors came to site and updated his quote to include the length. I discovered that the

concreting quote did not include any bricks. The cost of dressing up the concrete needs to be added to the costs, but as any quote will expire before the concrete has even been poured I have simply estimated this to be around \$400. Alex also stressed that it was important to start work on this ASAP before the original retaining wall moves any more and before it rains too much and increases the load on the wall. Wet sand is heavier than dry sand. I confirmed with WML that this change would be OK, and also asked what the maximum height the reinforced retaining wall would hold. It turns out that it was designed to hold a maximum of 30 degrees incline, less room for a spoon drain to stop water from collecting against the fence.

27/06/2015

Date that was set to auction my house because I ran out of money. No potential buyers showed up, most likely due to the retaining wall problem.

29/07/2015

Evening meeting with James Marsh and their lawyer. They told me that because the building permit was for 15 meters, I would need to get all 15 meters done at the same time, and they wanted a economy of scale discount. They also confirmed that it should only cost between \$5,000 and \$10,000 to do the shared 5.6 meters.

No quote has been shown to or received by me and I doubt very much one exists as over 4.4 cubic meters of concrete is needed, as well as form work and labour.

I told them that I simply cannot afford to do the entire section of retaining wall, and that the 5.6 meter section was urgent because of the damage to that section.

The following day I went to the council and asked them about needing to build the entire length of the permit. I was told it should be OK and to just fill in the notice of completion for the section that has been done.

If the Marshes are not happy with this then I will simply pay to get a new building permit, hopefully at their cost.

30/07/2015

Second Pre-Trial hearing at the magistrates court in Bunbury.

This delay cost me a lot of money in lost wages and lost work opportunities, and was very quick and basic. The Marshes still refused to pay anything at all, I refused to delay things any longer as it was costing me a lot of money, and the previous delays had achieved nothing whatsoever. The registrar set in motion the next stage and is going to send out paperwork that needs to be filled in.

I lodged a [Form 19. General procedure claim](#) this same day.

3/8/2015

Received [a Form 25. General Order.](#) from the Bunbury Magistrates Court.

4/8/2015

Sent [Email to Marshes listing the documents I posses. and documents I would like a copy of](#)

9/9/2015

Submitted [Form 35.](#) and [List of Documents, Form 36 page 1.](#) and [Form 36. page 2.](#) to the Magistrates court. At this date I have still not received the alternate quote to reinforce the retaining wall that the Marshes delayed the pre-trial hearing for.

15/9/2015

Visited lawyer (Max Owen) for an hour on this day.

Received **Some** of the building permit for the Marshes new retaining walls, confirming that Structerre are a part of the original problem, and the structural report they did on my boundary retaining wall is a probable conflict of interest.

No indication of who it was from and left in my letter box.

[Form BA3 page 1.](#) [Form BA3 page 2.](#) [Form BA3 page 3.](#) [Form BA3 page 4.](#) [Form BA4 page 1.](#) [Form BA4 page 2.](#)

"Form BA7 - Notice of Completion" is missing, as well as site plans 1 & 2, and the Structerre Engineering detail HOR ??? drawings.

17/9/2015

I submitted a [request for default judgement](#), 28 days after the deadline for the Marshes to submit their paperwork.

6/10/2015

[Notice of default Judgement.](#)

2/11/2015

Received [a change of address notice](#), a [notice to contest default judgement](#), which was submitted 31 days after the default judgement had been granted, and 10 days after the deadline, and the [Document defending the case](#), that was due before 20th August.

6/11/2015

My notice to [defend default judgement.](#), and [Form 23 to go with it.](#)

18/11/2015

Received [the Defences list of documents available](#) that was due before 2nd October.

20/11/2015

Receive [a cover letter](#), and a [notice from the Bunbury Magistrates court](#), telling me I can defend the default judgement by phone.

11/2015

[Affidavit defining costs](#). Not sure on date submitted.

27/11/2015

Received a copy of [Defences letter to Magistrates court stating that they have a good case](#). This includes as attachments;

Certificate of titles for both properties

A copy of the 11/2012 Strutterre engineering report

An email sent by me to Sharyl Marsh, Gary Bruhn from Bunbury council, and Murray Borthwick from Bunbury council, describing the situation as I saw it at that time dated 24/04/2014.

An email from me to the department of commerce dated 28/05/2014 trying to get an Adjudicator to fix the problem.

A copy of the building permit to reinforce the boundary retaining wall.

An email from David Brightwell from Bunbury council informing the Marshes that I had a building permit to reinforce the retaining wall, but no other retaining wall permits. Dated 28/05/2015

Three photos of the sewerage easement

An email from the Water Corporation addressed to me and BBC to Sharyl Marsh on 11/09/2015 re the height of the sewerage manhole.

A letter from M&A Papas Stone constructions certifying that the retaining wall was built to requirements dated 7/05/2015.

Pages 32 to 40 are of the building permit for the Marshes new retaining walls. [Design](#), [Permit](#), [requirements](#), [compliance](#).

A copy of the quote to reinforce the boundary retaining wall

A fencing quote

Three emails from Sharyl dated 7/7/2014 where they only wanted to pay for approx 1/4 of the fence.

A statement of defence dated 2/11/2015

03/12/2015

Letter from the Marshes [wanting to change the 9th December hearing from phone to attending](#). Sent by post when it was [known I would be away](#), and when other emails were sent while I was away.

07/12/2015

[Email from Ian Morrison](#) with a [letter of consent to be signed stating that I agree to pay for delays and to drop the default judgement](#). Also included is a [outline of submissions](#)

08/12/2015

I reply to the last minute affidavit by the defence. [Doc format](#). and [PDF format](#).

09/12/2015

Court hearing by audio link. Magistrate was in Collie, I was at the Capricorn Roadhouse camp, Ian was at the Bunbury court house.

This hearing was connected, then promptly cancelled as the magistrate was too busy.

I requested this hearing to be postponed till December 16th, as this date had been booked months in advance, but Ian had booked holidays and this took priority.

Arrangements were made to [postpone the decision to determine if the default judgement would stand or not till Jan 15th](#).

16/12/2015

Original hearing date to determine damages set on 6th October 2015. Did not happen due to Ians holiday.

18/12/2015

[Court agrees to conduct hearing by audio link](#). This did not happen as I was unemployed on that day anyway.

04/01/2016

[Updated affidavit defining costs](#).

05/01/2016

[Support default judgement as DOC](#) and as [PDF](#). This document had as attachments a [List of building permits](#), [Building licence 11489 Conditions of approval](#), [Building permit 11489 invoice](#), [Building permit 11489](#), Building permit 11489 footing detail, [Building permit 11335 \(Western retaining wall\)](#), [Building permit 11335 footing detail](#), and an [earlier version of this time-line less the first page](#).

15/01/2016

Hearing to determine if the default judgement will stand, and possibly to determine the amount of the default judgement. Set on December 9th, 2015.

The default judgement was appealed and overturned.

[Paperwork from court](#). Received the paper copy by post on Friday 22 Jan. Apparently it sat on someones desk for 3 days.

At some time in the past someone else appealed a default judgement, and the defence had no hope of defending themselves.

Because they had no hope of defending themselves, the judge allowed the default judgement to stand, regardless of any other irregularities.

That has now been twisted to mean that if the defence has a plausible defence, default judgements are not possible, making the entire default judgement process irrelevant.

The Judge also said she was surprised that I was not using the dividing fences act. The dividing fence is at most %10 of the total cost, also the dividing fences act has two specific acts of negligence, fire or a falling tree. Nothing else matters. This is definitely negligence, but not covered [under the dividing fences act](#).

Also including the dividing fence in this action is insurance against losing and paying the Marshes legal fees.

The Judge also told me I would probably need an expert witness to attend the hearing, as it was up to me to prove that they caused the damage.

James Marsh has been added to Sharyl Marsh as a defendant.

[Statement of defence](#). submitted later that same day.

19/01/2016

[Defence list of documents. Forms 35 & 36](#)

22/01/2016

New deadline for defence to submit forms 35 & 36, which was sealed on 19/01/2016.

I got myself in a muddle and thought I also needed to submit forms 35 & 36. Disclosure of documents and declaration. I also submitted an affidavit to request documents from the Marshes, but Ian Morrisons office was closed when I tried to deliver them.

My [Form 35 declaration in jpeg](#). [Form 35 in doc format](#).

My [Form 36](#). [My list of documents in PDF](#). and [in DOC format](#).

25/01/2016

My Affidavit to request documents in PDF and [in DOC format](#). This affidavit has [this email from Structerre on 20/10/2012](#) attached.

19/02/2016

Deadline to comply with Order 4 of the general orders dated 30th July 2015.

"Each party to lodge with the court a listing conference memorandum on or by 23 October 2015 and to provide to the court unavailable dates for attendance at such conference by the same date"

[Info on filling in a form 32](#)

2/03/2016

Court hearing at 9:30am at the Bunbury Magistrates court.

[Magistrates court forms](#).

[WA Laws](#).

[Limitation Act, page 15 for general stuff is 6 years](#).

[Photos of Fence](#)